

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 16,979
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals a decision by PATH finding that she was not covered by Vermont Health Access Plan (VHAP) benefits during a period of time she received certain dental services. The issue is whether PATH misled the petitioner with regard to her eligibility at the time the services were rendered.

FINDINGS OF FACT

1. The petitioner applied for health insurance through the VHAP program in January of 2001. The Department mailed her notice dated February 5, 2001 advising her that she had been found eligible for the VHAP program as of February 2, 2001. Also contained in that notice was the following advisory:

The way you receive benefits under this program is expected to change at some time in the future. When this happens, you will receive another letter with more information. This change will result in better benefits for you. You are now receiving limited benefits coverage (See enclosed brochure).

2. The brochure which accompanied the notice entitled "A Vermont Health Care Program for Adults" contained information about premiums (payable every six months if applicable), co-payments and covered services. The brochure specifically advised recipients of the following:

. . . VHAP is made up of two programs: VHAP-Limited and VHAP-Managed Care. When you are first eligible for VHAP, you will be covered by VHAP-Limited for a month or two. VHAP-Limited gives you limited coverage until you can join the managed care program. Soon after you are found eligible, you will get a large envelope in the mail that explains managed care. It will tell you how to join our managed care program and choose a PCP (primary care provider), who will work with you to keep you healthy. When you are a member of the plan, you will be in VHAP-Managed Care and will be covered for more services. . . VHAP-Limited does NOT pay for non-emergent inpatient hospital care, medical supplies and equipment, eye care and glasses, dental care, and chiropractic care. When you move into VHAP-Managed Care, you get all these extra services.

3. The petitioner agrees that she received the notice and the brochure and that she is capable of reading and understanding written material. She believes that she read the information but that its meaning did not "sink in". She states that she was under the impression somehow that she would not be in managed care for about six months. Although a toll-free number to call for additional information was included in the brochure, the petitioner did not call to clear up her confusion about the timing of her benefits.

4. Approximately a week after she received the notice and brochure, a packet of materials concerning managed care arrived at the petitioner's home. The packet was missing a form and the petitioner called the toll free number to get the missing form. She did not ask about the managed care onset date when she called because she thought she understood it. The petitioner returned all of the managed care forms to PATH in a timely manner.

5. Over the weekend of February 24/25, 2001, the petitioner's bottom dental plate broke. She called her dentist on Monday, February 26, to get an emergency appointment to repair it. She was given an appointment on February 27. When the petitioner showed up for her appointment, the office administrator called VHAP to see if the services rendered that day would be covered. She was told that they would not. There was no evidence offered as to the entirety of the conversation. The administrator simply told the petitioner that VHAP would not cover the services that day. The petitioner decided to go ahead with the repair anyway in spite of her knowledge that there was no coverage.

6. The petitioner admits that upon hearing she was not covered she did not call VHAP herself for further information about her onset date. This was because she said she still believed that coverage was several months away and she needed

to have the repair done fairly soon. She also did not want to cancel the appointment until the insurance issue could be resolved because the dentist had made some effort to accommodate her emergency. The plate was repaired and returned to her on February 28. The petitioner paid the bill of \$290 in cash.

7. On March 1, 2001, after the repair work was done, the petitioner did call the VHAP office to find out why she was not covered for dental services. She was advised that her coverage went into effect that very day, March 1, 2001 and that she was about to receive a notice so advising her.

8. PATH enrolls persons in the managed care program at the beginning of each month. Whether a person is enrolled within a month or two months, depends upon the timing of the eligibility finding and the return of the managed care forms. The petitioner was found eligible early in the month of February and returned her forms promptly allowing PATH to enroll her on the March 1 date instead of the following April 1 date.

9. Providers can call a number to find out if their patients have VHAP coverage at the time a service is about to be rendered. The personnel who give that information to providers do not know when plans are about to change. If they

are asked when benefits will begin, they can connect the caller with another person who can find out that information.

10. The petitioner asks that PATH reimburse her for her out of pocket expense of \$290 because she was unaware that she would have been covered if she had waited two more days. PATH has refused saying that the petitioner was not covered on the date the service was rendered in February and that it did not mislead her into thinking that she was covered.

11. Based on the above facts, it is found that the petitioner was aware that she would not be covered for dental services on the day that she received them. She was unaware that she could have been covered if she waited two more days. However, it is also found that had the petitioner used due care she would have easily learned of the date of eligibility for managed care coverage before agreeing to the provision of dental services. Her failure to carefully read the information sent to her about managed care and her failure to call PATH for information about the exact date of her eligibility before the dental services were rendered were the biggest factors leading to her incurring this expense herself. She should have been aware from reading the eligibility notice and brochure and from her receipt of the managed care package that her eligibility for VHAP-Managed care was due to start soon. The petitioner's contention that PATH misled her by not

telling the dental office administrator of the onset date of her coverage is without merit since there is no evidence that the administrator made any effort to determine anything other than the status of her coverage on the day services were rendered.

ORDER

The decision of the Department denying coverage for the dental services is affirmed.

REASONS

Under regulations adopted by PATH, persons who are found eligible for VHAP benefits are initially placed on the VHAP-Limited program which does not cover dental services. See W.A.M. 4002.31, 4003.1 and P-4003. The regulations further provide that persons who have made a choice of managed care plan by the 15th of any month are enrolled in managed care no later than the first of the following month while those who choose after the 15th of any month are enrolled the first day of the second following month. W.A.M. 4002.32.

Under these regulations, the Department correctly enrolled the petitioner at the earlier time based on her timely return of the managed care information. She was therefore eligible for VHAP-Limited through the month of February 2001

and for VHAP-Managed Care from March 1, 2001 forward. The Limited program would not cover dental services while the Managed Care program would. Therefore, the Department was also correct in denying her coverage for dental services on February 27, 2001.

The petitioner does not dispute the general operation of this program but claims that the Department should be barred from applying the rules to her because she was misled about the dates of her eligibility. PATH clearly has an obligation to tell applicants what their rights and benefits are under the VHAP program and the Board has the authority to "estop" PATH from applying its regulations if it has failed in this duty and has thereby harmed an applicant. Stevens v. Department of Social Welfare 159 Vt. 408, 620 A.2d 737 (1992).

The four essential elements of estoppel are: (1) the party to be estopped must know the facts; the party to be estopped must intend that its conduct shall be acted upon or the acts must be such that the party asserting the estoppel has a right to believe it is so intended; (3) the party asserting estoppel must be ignorant of the true facts; and (4) the party asserting estoppel must detrimentally rely on the conduct of the party to be estopped. Burlington Fire Fighters' Ass'n v. City of Burlington 149 Vt. 293, 299, 543 A.2d 686, 690-691 (1988).

It cannot be concluded herein that even the first element of this test is met. There is no evidence that the petitioner contacted PATH to tell it the pertinent fact: that she needed to obtain dental care as soon as possible and wanted to learn the onset date for coverage of this benefit. It cannot be concluded from the dental office administrator's call to PATH that it was aware of this fact because the contents of the conversation are not known. It is only known that PATH correctly confirmed that the coverage was not available that day. Since PATH was ignorant of the facts of the situation and was not asked for information regarding the onset date, it cannot be found that it said anything specific with regard to the petitioner's situation which it expected to be acted upon by the petitioner. Therefore, the second element of estoppel is not met either.

The third element requires the petitioner to be ignorant of the true facts. It is certainly clear that the petitioner was ignorant of the true facts but her ignorance was due to her own negligence. The petitioner should have known from the information provided to her by PATH during the month of February and her own return of the managed care application forms that her eligibility for that program was likely to begin in the near future. The petitioner admitted that she was uncertain as to the start date and that she knew that she



could call PATH for more information. There was no credible reason offered by the petitioner as to why she did not call and confirm her managed care onset date before she obtained the dental service. The petitioner's ignorance in this regard was of her own making. She detrimentally relied on her own erroneous assumptions about the program, not on any lack of information or misinformation given to her by PATH.

It must be concluded from the above that PATH did not fail in its obligations to inform the petitioner about the features of the VHAP program and so should not be estopped from enforcing its eligibility dates. PATH's decision to deny reimbursement of the petitioner's out of pocket expenses for dental benefits she received before the date of Managed Care eligibility is affirmed.

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